

REGULATION (EU) 2018/1805 AND THE AUSTRIAN CONFISCATION REGIME



RECOVER project – Grant Agreement No. 101091375

Kathrin Stiebellehner

30th November 2023

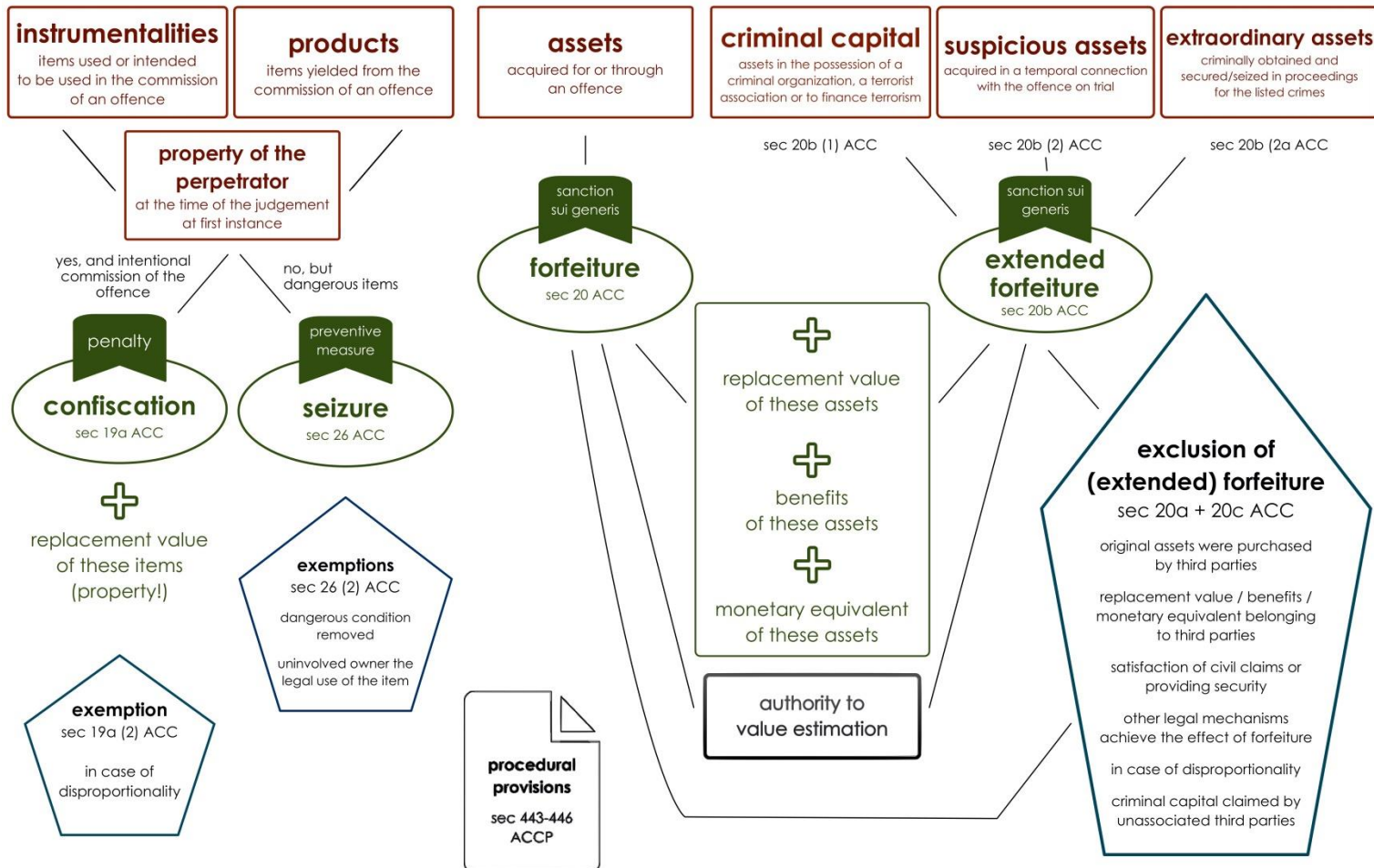


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THE AUSTRIAN CONFISCATION REGIME



AUSTRIAN CONFISCATION MODELS

■ Confiscation („Konfiskation“, sec 19a ACC)

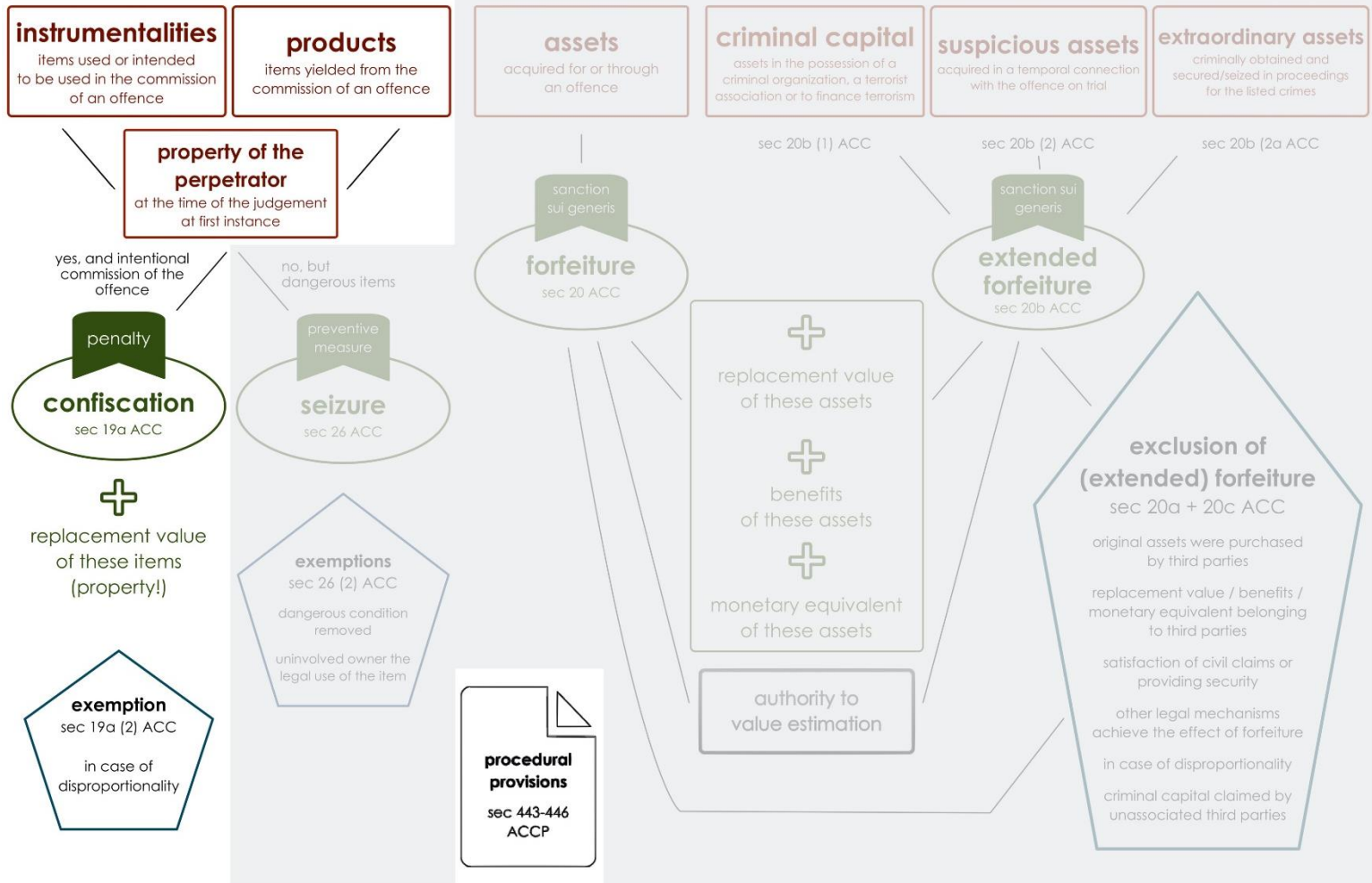
- legal nature: penalty
- any item used or intended to be used in the commission of an intentional offence (instrumentalities; e.g. phone, burglary tools)
- any item yielded from such an offence (products; e.g. forged documents)
- replacement value of these items (e.g. sales proceeds)
- prerequisite: sole ownership of the perpetrator at the time of the judgment at first instance
- exception: confiscation is disproportionate

■ Seizure („Einziehung“, sec 26 ACC)

■ Forfeiture („Verfall“, sec 20 ACC)

■ Extended forfeiture („erweiterter Verfall“, sec 20b ACC)

CONFISCATION



AUSTRIAN CONFISCATION MODELS

■ Confiscation („Konfiskation“, sec 19a ACC)

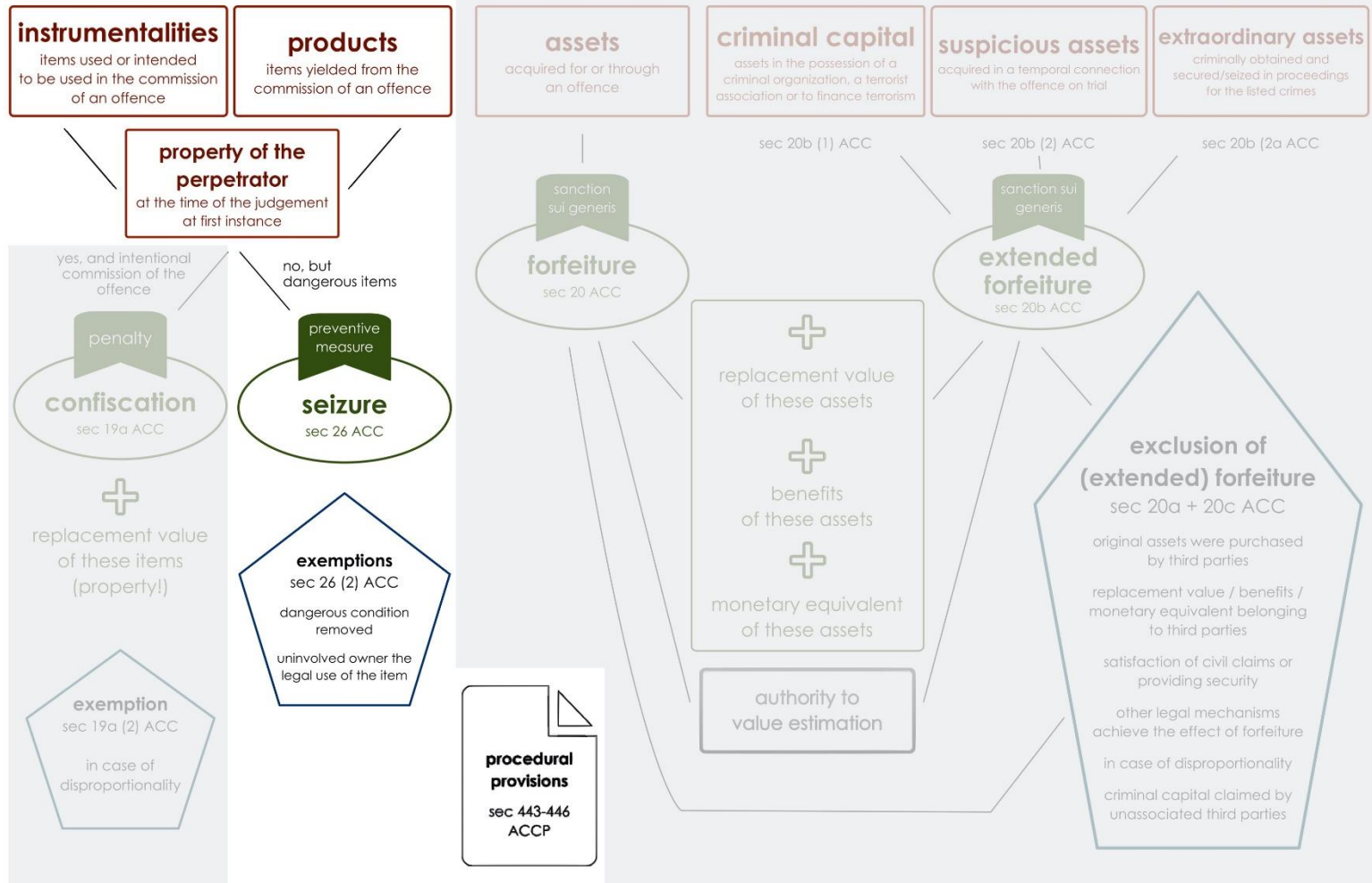
■ Seizure („Einziehung“, sec 26 ACC)

- legal nature: preventive measure
- any item used or intended to be used in the commission of an offence (e.g. weapons)
- any item yielded from an offence (e.g. fake money)
- prerequisite: the specific nature of the item deems the seizure necessary in order to combat the commission of offences
- exceptions
 - an authorized person removes or renders useless the specific properties or nature which facilitate the commission of offences
 - any items that are subject to legal claims by persons not involved in the offence may only be seized if the person concerned cannot ensure that the item will not be used for the commission of offences

■ Forfeiture („Verfall“, sec 20 ACC)

■ Extended forfeiture („erweiterter Verfall“, sec 20b ACC)

SEIZURE



AUSTRIAN CONFISCATION MODELS

■ Confiscation („Konfiskation“, sec 19a ACC)

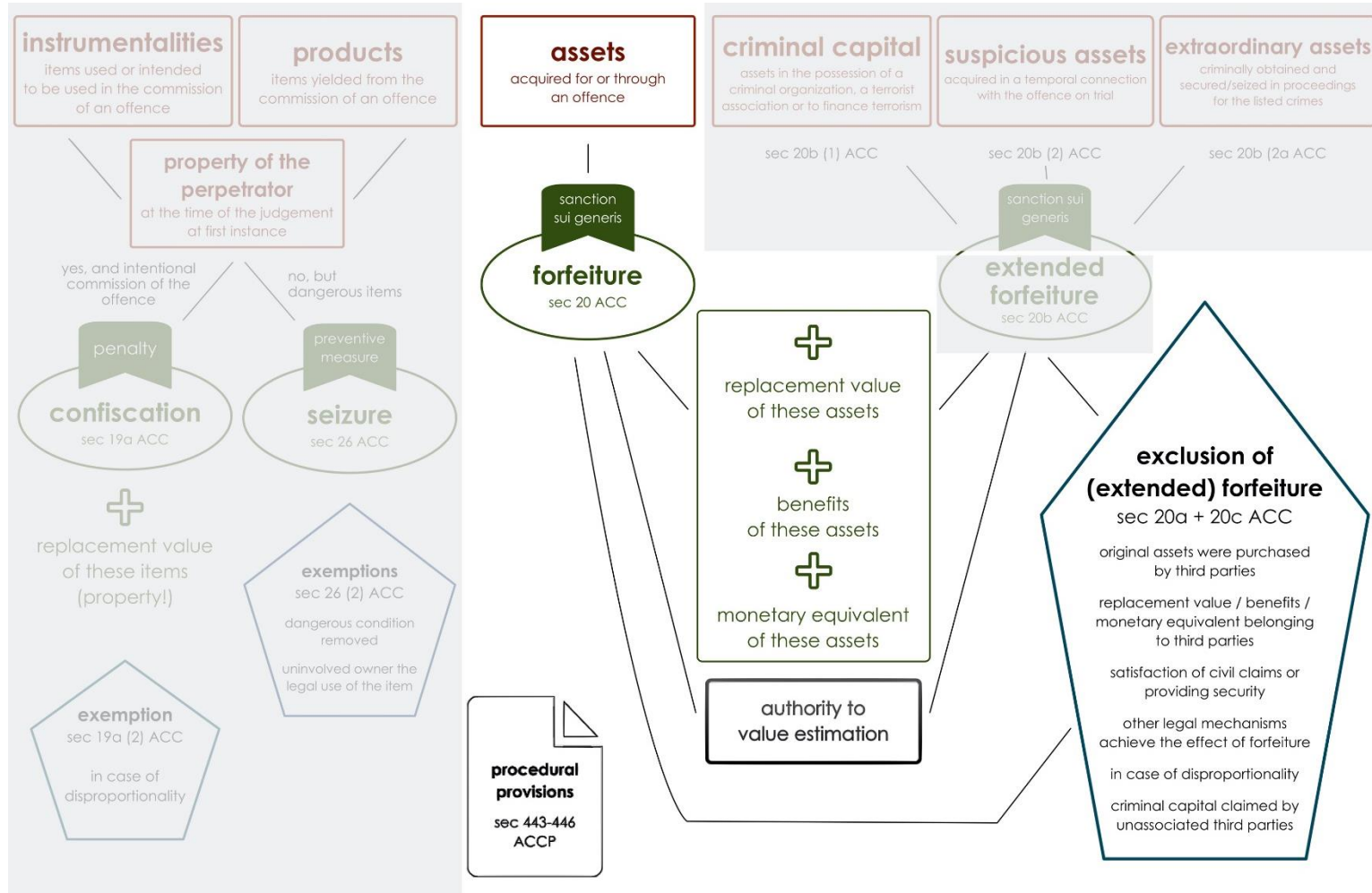
■ Seizure („Einziehung“, sec 26 ACC)

■ **Forfeiture („Verfall“, sec 20 ACC)**

- legal nature: sanction sui generis (disputed)
- any assets acquired for or through an offence (loot, wages)
 - not permissible if the person who purchased these assets was unaware of the offence (sec 20a (2) ACC)
- any benefits + replacement value of these assets
 - not permissible to the extent that the person who acquired these assets was unaware of the offence (sec 20a (1) ACC)
- monetary equivalent of these assets (value forfeiture)
 - not permissible to the extent that the person who acquired these assets was unaware of the offence (sec 20a (1) ACC)
- discretion to determine the extent of asset forfeiture
- exception: forfeiture is disproportionate

■ Extended forfeiture („erweiterter Verfall“, sec 20b ACC)

FORFEITURE



AUSTRIAN CONFISCATION MODELS

- Confiscation („Konfiskation“, sec 19a ACC)
- Seizure („Einziehung“, sec 26 ACC)
- Forfeiture („Verfall“, sec 20 ACC)
- **Extended forfeiture („erweiterter Verfall“, sec 20b ACC)**
 - legal nature: sanction sui generis
 - three types of extended forfeiture
 - criminal organizations, terrorist associations, terrorist financing (sec 20b (1) ACC)*
 - assets in the possession of the criminal organization or the terrorist association
 - assets provided or collected for the financing of terrorism
 - not permissible if the assets are the subject of legal claims by persons who are not associated with criminal organizations, terrorist associations, or the financing of terrorism
 - temporal connection to a criminal offence (sec 20b (2) ACC)
 - extended confiscation in rem (sec 20b (2a) ACC)

AUSTRIAN CONFISCATION MODELS

- Confiscation („Konfiskation“, sec 19a ACC)
- Seizure („Einziehung“, sec 26 ACC)
- Forfeiture („Verfall“, sec 20 ACC)
- **Extended forfeiture („erweiterter Verfall“, sec 20b ACC)**
 - three types of extended forfeiture
 - criminal organizations, terrorist associations, terrorist financing (sec 20b (1) ACC)
 - temporal connection to a criminal offence (sec 20b (2) ACC)*
 - commission of
 - an unlawful – not necessary culpable – act pursuant to sec 278 (founding of or participation in a criminal association) or 278c ACC (terrorist conduct) or
 - an intentional offence punishable with more than three years imprisonment extended confiscation in rem (sec 20b (2a) ACC)
 - assets were acquired for or through these offences
 - forfeiture of any assets obtained in a temporal connection with the offence if there is reason to assume that they were acquired from an offence
 - the lawful acquisition of the assets cannot be substantiated
 - extended confiscation in rem (sec 20b (2a) ACC)

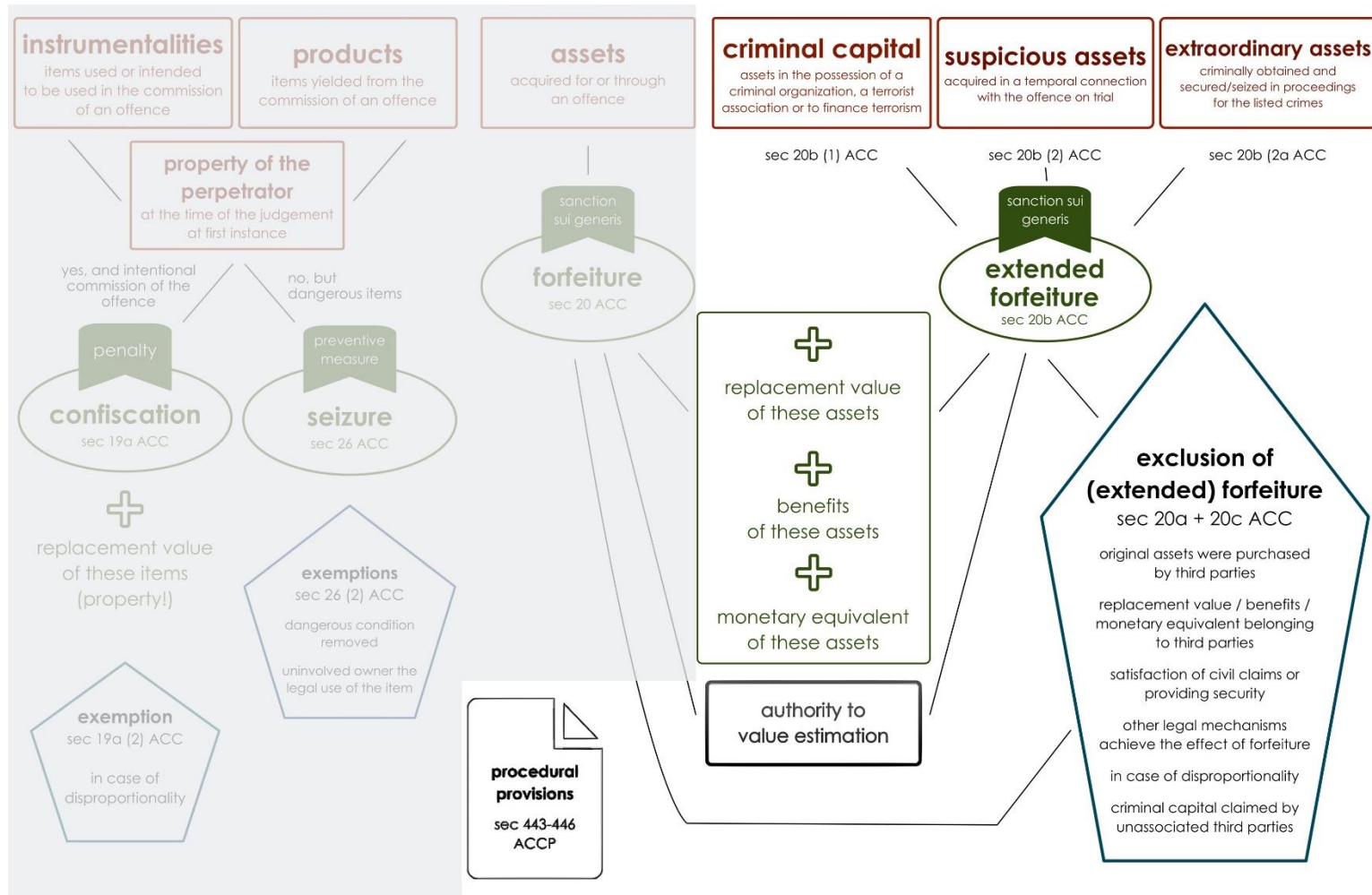
AUSTRIAN CONFISCATION MODELS

- Confiscation („Konfiskation“, sec 19a ACC)
- Forfeiture („Verfall“, sec 20 ACC)
- Seizure („Einziehung“, sec 26 ACC)
- **Extended forfeiture („erweiterter Verfall“, sec 20b ACC)**
 - three types of extended forfeiture
 - criminal organizations, terrorist associations, terrorist financing (sec 20b (1) ACC)
 - temporal connection to a criminal offence (sec 20b (2) ACC)
 - extended confiscation in rem* (sec 20b (2a) ACC)
 - assets originating from a criminal offence which were secured or seized during criminal proceedings for particular offences
 - not possible to prosecute or convict the person concerned for the crime
 - initial suspicion of the offence is sufficient
 - unexplained wealth model of extended forfeiture

LIST OF CRIMES (SEC 20B (2A) ACC)

- slavery (sec 104 ACC)
- trafficking in persons (sec 104a ACC)
- money laundering (sec 165 ACC)
- pornographic images of a minor (sec 207a ACC)
- procuring engagement in prostitution and pornographic performances by a minor (sec 215a (1) or (2) ACC)
- pimping (sec 216 ACC)
- transnational prostitution trade (sec 217 ACC)
- subversive associations (sec 246 ACC)
- organized crime and terrorism (sec 277-280 ACC)
- misuse of official authority (sec 302 ACC)
- corruption (sec 304-309 ACC)
- genocide, crimes against humanity and war crimes (sec 321-321k ACC)
- drug trafficking (sec 28a NSA)
- taxation fraud (sec 39 FCL)
- transnational VAT fraud (sec 40 FCL)
- trafficking in human beings (sec 114 APL)

EXTENDED FORFEITURE



**THANK YOU
FOR YOUR ATTENTION**



RECOVER project

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